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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,528	12/13/2000	Paul F. Austin	5150-50900	9832

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EXAMINER

BASOM, BLAINE T

ART UNIT	PAPER NUMBER
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2173

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,528

Applicant(s)

AUSTIN, PAUL F.

Examiner

Blaine Basom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-16,19-24 and 27-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-16,19-24 and 27-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION***Response to Arguments***

Regarding the claimed invention, the Applicants argue that combination of Risberg (U.S. Patent No. 5,339,392 to Risberg et al.) and Kodosky (U.S. Patent No. 5,291,587), as described in the previous Office Action, fails to teach the limitations recited in claim 1, and in claims similar to claim 1. Similarly, the Applicants argue that the combination of Risberg, Kodosky, and Office 97 (*Mastering Microsoft Office 97, Professional Edition*), as described in the previous Office Action, fails to teach all of the limitations recited in claim 16. Applicant's arguments with respect to these claims have been considered but are moot in view of the new grounds of rejection which follow.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 83 of copending Application No. 09/737,527. Although the conflicting claims are not identical, they are not patentably distinct from each other.

In the instant application, claim 1 recites a method for configuring a graphical program to publish or subscribe to a data target or data source, respectively, the method comprising: receiving user input specifying at least one of a data source or data target; automatically configuring the GUI element to perform at least one of: receiving data from the specified data source, and/or publishing data to the specified data target; wherein the graphical program includes a block diagram comprising a plurality of connected nodes, wherein the connected nodes visually represent functionality of the graphical program, wherein said automatically configuring comprises automatically configuring the block diagram; and wherein said automatically configuring is performed based on the user input specifying at least one of a data source or data target.

Similarly, claim 83 of copending Application No. 09/737,527, and claim 80 upon which claim 83 depends, express a method for configuring a first computer program to display data and publish data, the method comprising, in part: receiving user input specifying a data source; automatically configuring the first computer program to receive

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data from the specified data source and display the data in the GUI element during program execution; wherein the first computer program is a graphical program, and wherein the graphical program comprises a plurality of interconnected nodes which visually indicate functionality of the graphical program.

Consequently, claim 83 of copending Application No. 09/737,527 differs from claim 1 of the instant application in that claim 83 of the copending application expresses automatically configuring a first computer program, instead of a GUI element, to perform at least one of: receiving data from the specified data source, and/or publishing data to the specified data target. However, since claim 83 of copending Application No. 09/737,527 expresses that such data is received and displayed by a GUI element, the GUI element is in fact configured. Additionally, claim 83 of copending Application No. 09/737,527 fails to explicitly recite that automatically configuring comprises automatically configuring the block diagram; and wherein this automatically configuring is performed based on the user input specifying at least one of a data source or data target. However, claim 83 expresses automatically configuring a first program, the first program comprising a block diagram, and wherein this automatically configuring results in a first computer program receiving data from a *user-specified* data source. Thus the block diagram of claim 83 is automatically configured, and this automatic configuration is performed based on the user input. Thus claim 83 of copending Application No. 09/737,527 falls entirely within the scope of claim 1 of the instant application, or in other words, claim 1 is anticipated by claim 83 of copending Application No. 09/737,527.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-16, 19-24, and 27-34 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,861,882, which is attributed to Sprenger et al. (and hereafter referred to as “Sprenger”). In general, Sprenger presents a system for testing devices, such as radio systems (see column 2, lines 34-49). Sprenger particularly discusses efficiently connecting a plurality of test elements, such as oscilloscopes, into various circuit configurations. To this end, Sprenger teaches connecting all such test elements, and the device to be tested, via a network (see column 3, line 20 – column 5, line 19). A computer connected to the network comprises a GUI by which the user may select icons representing the test elements, and connect and configure such icons into a graphical representation of a circuit (see column 6, line 51 – column 7, line 8; and column 8, lines 14-49). In response, the connected devices are automatically configured into the circuit specified by the user, and may serve as a source of information to the user (see column 8, line 36 – column 9, line 37). Sprenger is thus considered to teach a method for configuring a graphical program to publish or subscribe to a data target or data source, respectively.

Specifically regarding claim 1, Sprenger teaches receiving user input specifying a data source, specifically by dragging, from an “Equipment Shelf” window onto a “Test Bench” window, an icon representing the data source (see column 6, line 51 – column 7, line 8; and column 7, lines 44-50). In turn, the graphical program of Sprenger is automatically configured to receive data from this specified data source (see column 8, line 50 – column 9, line 37). The user couples this icon via a plurality of other icons, which represent other test devices, into a circuit (see column 8, lines 14-49, in addition to FIG. 3). Consequently, Sprenger teaches a graphical program which includes a block diagram, namely this circuit, which comprises a plurality of connected nodes, specifically icons representing devices, wherein the connected nodes visually represent functionality of the graphical program, and wherein the block diagram is automatically configured to receive data from the specified data source. As the graphical program is configured to receive data from the test devices selected by the user, the configuration of the graphical program is understood to be based on the user input specifying the data sources.

Referring to claim 24, Sprenger discloses that the above-described method is implemented on a computer comprising a display device, a processor, and a memory medium coupled to the processor (see column 3, line 20 – column 5, line 19). Such a computer implementing the above-described system is considered a system, like that recited in claim 24, which is for configuring a graphical program to publish or subscribe to a data target or data source, respectively.

Regarding claim 31, Sprenger discloses that the above-described method may be implemented via a memory medium (see column 3, line 20 – column 5, line 19, for

example). Such a memory medium used to implement the above-described method is considered a memory medium, like that recited in claim 31.

As per claims 4 and 27, after the user creates a test circuit, the graphical program is automatically configured to receive data from various test devices within the test circuit. Consequently, the graphical program is configured without user input.

As per claim 5 and 32, the nodes of the graphical program of Sprenger represent devices, as is described above. The user may select one of these nodes in order to retrieve test data from the associated device (see column 8, line 50 – column 9, line 37). Consequently, the graphical program is automatically configured to such that one or more of the nodes receive data from the specified data source during program execution.

Regarding claims 6, 28, and 33, the user may select one of the nodes in the circuit in order to retrieve test data from the associated device (see column 8, line 50 – column 9, line 37). Consequently, the graphical program is automatically configured to such that this node programmatically receives data from the specified data source during program execution.

As per claim 7, Sprenger discloses that automatically configuring the graphical program comprises automatically creating and storing a data structure, namely a net list, which comprises source/target information, wherein the source/target information is useable during execution of the graphical program to programmatically receive data from the specified data source (see column 8, lines 35-49).

In reference to claims 8, 29, and 34, the graphical program of Sprenger is automatically configured by including one or more nodes in the circuit diagram, wherein

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the nodes are operable to receive data from the specified data source, as is described above.

As per claim 9, the nodes within the circuit diagram of Sprenger may be configured to receive data from an associated test device, as is described above. Such nodes are thus considered "DataSocket" nodes, like that recited in claim 9.

Regarding claims 10 and 30, the circuit diagram of Sprenger comprises a plurality of nodes which are connected to represent functionality of a test circuit (see column 8, lines 14-49, in addition to FIG. 3). Thus Sprenger teaches automatically connecting at least two nodes such that the at least two connected nodes are operable to receive data from the specified data source, wherein the at least two nodes visually indicate performance of receiving data from the specified data source.

In reference to claim 11, the graphical program of Sprenger may be executed to programmatically receive data from the specified data source, as is described above.

As per claims 12 and 13, Sprenger discloses that each device may be located over a bus, and have a unique address for locating the device, which is automatically generated and maintained (see column 5, line 47 - column 6, line 19). However, Sprenger further discloses that the devices may be instead positioned within a network (for example, see column 5, lines 1-19). In such a case, it is understood that this address is a URL, as is known in the art.

With respect to claims 14 and 15, the user specifies a data source via a drag-and-drop interface technique, specifically by dragging, from an "Equipment Shelf" window onto a "Test Bench" window, an icon representing the data source (see column 6, line 51

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– column 7, line 8; and column 7, lines 44-50). This Equipment shelf window, having a plurality of test devices from which to choose, is considered to present a menu.

In regards to claim 16, Sprenger teaches receiving user input specifying a data source, specifically by dragging, from an “Equipment Shelf” window onto a “Test Bench” window, an icon representing the data source and selecting the icon (see column 6, line 51 – column 7, line 8; column 7, lines 44-50; and column 8, line 50 – column 9, line 37). The icon is particularly selected amongst a plurality of icons situated with a circuit diagram. Thus user input is received to a block diagram of the graphical program, wherein the block diagram comprises a plurality of connected nodes, and wherein the connected nodes visually represent functionality of the graphical program. In turn, the graphical program of Sprenger automatically displays a GUI element representing the selected data source, whereby the GUI element is automatically configured to receive data from this specified data source (see column 8, line 50 – column 9, line 37). As the graphical program is configured to receive data from the test devices selected by the user, the configuration of the graphical program is understood to be based on the user input specifying the data sources.

As per claim 19, after the user creates a test circuit, the GUI element is automatically configured to receive and display data from an associated device within the test circuit, as is described above. The GUI element is thus configured to receive and indicate data from the specified data source without user programming.

Regarding claims 20-22, Sprenger discloses that each icon representing a data source may have a distinct GUI element to display data from the source, the distinct GUI element specifically being an enlarged icon (see column 8, line 50 – column 9, line 37).

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Thus the displayed GUI element is based on the icon selected by the user. Sprenger thus teaches automatically determining an appropriate GUI element to display, based on the specified data source, wherein automatically displaying a GUI element comprises automatically displaying the determined GUI element. In response to selecting the icon, Sprenger teaches receiving data from the associated data source, wherein this data is analyzed in order to determine an appropriate GUI element to indicate data received from the data source (see column 5, line 63 – column 6, line 19; column 7, lines 42-36; and column 8, line 50 – column 9, line 37). The data received from the data source is thus understood to be in a self-describing format, this data being displayed by the GUI element.

With respect to claim 23, the user specifies a data source in part by a drag-and-drop interface technique, specifically by dragging, from an “Equipment Shelf” window onto a “Test Bench” window, an icon representing the data source (see column 6, line 51 – column 7, line 8; and column 7, lines 44-50).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blaine Basom whose telephone number is (703) 305-7694. The examiner can normally be reached on Monday through Friday, from 8:30 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeza can be reached on (703) 308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

btb

BA HUYNH
PRIMARY EXAMINER